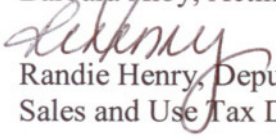


# Memorandum

To : Honorable Betty T. Yee, Chairwoman  
Honorable Jerome E. Horton, Vice Chair  
Honorable Michelle Steel  
Honorable John Chiang  
Barbara Alby, Acting Member

Date: September 3, 2010

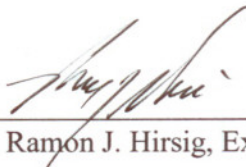
From :   
Randie Henry, Deputy Director  
Sales and Use Tax Department

Subject : **September 15, 2010, Business Taxes Committee  
Suggested Revisions to  
Regulation 1807, *Petitions for Reallocation of Local Tax***

In his August 25, 2010 letter, Mr. Johan Klehs has suggested several revisions to Regulation 1807, *Petitions for Reallocation of Local Tax*. This issue has been placed on the agenda of the September 15, 2010 Business Taxes Committee meeting.

Attachment: August 25, 2010 letter from Mr. Johan Klehs

cc: Mr. Alan LoFaso  
Ms. Regina Evans  
Mr. Louis Barnett  
Ms. Marcy Jo Mandel  
Ms. Mai Harvill  
Mr. Ramon J. Hirsig, MIC 73  
Ms. Kristine Cazadd, MIC 83  
Ms. Diane Olson, MIC 80  
Mr. Jeff McGuire, MIC 92

Approved:   
Ramon J. Hirsig, Executive Director

**JOHAN KLEHS & COMPANY, INC.**  
STRATEGY • GOVERNMENT RELATIONS • ADVOCACY

August 25, 2010

The Honorable Betty Yee, Chair  
Board of Equalization  
400 Capitol Mall, # 2580  
Sacramento, CA 95814

Dear Board Member Yee:



On behalf of the City of Livermore, we thank you for your interest in beginning the process to amend "Sales and Use Tax Regulation 1807- Petitions For Reallocation Of Local Tax" in your capacity as Chair of the Board of Equalization (BOE) Business Taxes Committee.

We have enclosed a copy of Regulation 1807 with suggested changes which you may want to consider as a starting point as the Business Taxes Committee begins its deliberations. The suggested changes to Regulation 1807 are made within the following context:

1. The current Regulation 1807 process to reach a final decision is too long. In one case involving the City of Livermore and other jurisdictions, this "fast tracked case" has been going for almost two years with the date of knowledge going back to 2007. Another matter dates back to 1999. Your office may want to take an inventory of all tax allocation cases under consideration at the BOE. The BOE staff has been doing an excellent job in working with all affected parties in these cases. However, the staff is working within the guidelines provide by the current and past regulations. It seems that the current process is without adequate deadlines allowing certain parties to "game the regulation" resulting in needless delays before a final decision can ever be made. Neither affected local jurisdictions nor taxpayers should have to participate in a process that is longer than a legislative session or the amount of time a typical civil case takes in court—especially since BOE decisions are subject to judicial review in any event. The BOE may want to consider a process that takes no longer than one year.
2. In Regulation 1807, Section (b)(7), we are recommending that any disputed local tax monies be placed in a "trust" or similar account until a final decision has been reached by the BOE as to who might be legally entitled to the monies. The effect of such a trust account would force jurisdictions to finish participating in an allocation request since they would not have possession of

the funds. The jurisdictions would also not rely on monies that they may not be legally entitled to and lessen the burden of repaying those monies if an affected jurisdiction is at the losing end of an allocation case.

3. That the BOE sponsor legislation paying interest to the winning jurisdiction of an allocation case of any monies held in trust when a final decision has been made for all affected jurisdictions.

Hopefully, our comments will be part of the agenda when the Business Taxes Committee schedules this issue on September 15, 2010. We look forward to working with you on this issue.

Please feel free to contact me if we can be of any service to you in the future.

Sincerely,



JOHAN KLEHS

Enclosure As Stated

CC: Ms. Linda Barton, City of Livermore  
Mr. John Pomidor, City of Livermore  
Ms. Robin Sturdivant, HdL Companies

State of California  
BOARD OF EQUALIZATION

**SALES AND USE TAX REGULATIONS**

**Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.**

Reference: Sections 7209 and 7223, Revenue and Taxation Code

**(a) DEFINITIONS.**

(1) **LOCAL TAX.** "Local tax" means a local sales and use tax adopted pursuant to Revenue and Taxation Code section 7200, et seq., and administered by the Board.

(2) **JURISDICTION.** "Jurisdiction" means any city, county, city and county, or redevelopment agency which has adopted a local tax.

(3) **PETITION.** "Petition" means a request or inquiry from a jurisdiction, other than a submission under Revenue and Taxation Code section 6066.3, for investigation of suspected misallocation of local tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

**(A)** Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

**(B)** Taxpayer's permit number or a notation stating "No Permit Number."

**(C)** Complete business address of the taxpayer.

**(D)** Complete description of taxpayer's business activity or activities.

**(E)** Specific reasons and evidence why the taxpayer's allocation is questioned. If the petition alleges that a misallocation occurred because a sale location is unregistered, evidence that the questioned location is a selling location or that it is a place of business as defined by California Code of Regulations, title 18, section 1802. If the petition alleges that a misallocation occurred because the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.

**(F)** Name, title, and telephone number of the contact person.

**(G)** The tax reporting periods involved.

"Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.

(4) **PETITIONER.** "Petitioner" is a jurisdiction that has filed a valid petition pursuant to subdivision (a)(3).

(5) **DATE OF KNOWLEDGE.** Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where a misallocation that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) **SUBSTANTIALLY AFFECTED JURISDICTION.** "Substantially affected jurisdiction" is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly



allocation (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.

(7) NOTIFIED JURISDICTION. "Notified jurisdiction" is a jurisdiction that has been notified as a substantially affected jurisdiction.

**(b) REVIEW BY ALLOCATION GROUP.**

(1) The Allocation Group will promptly acknowledge a submission intended as a petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied. The Allocation Group shall maintain a case log documenting the status of each petition. The case log shall be forwarded to the Board on a monthly basis. Copies of these reports shall be made available to each petitioner.

(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group provide a status report of the petition and/or issue its decision without regard to the status of its investigation. Within ~~90~~ 60 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted misallocation did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that a misallocation did occur, it will also mail a copy of its decision to any substantially affected jurisdiction. Any such notified jurisdiction may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and and within 90 days, issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision. If the written objection was filed by a notified jurisdiction all future local tax allocations from the account that is subject to the inquiry will be placed in trust until the administrative process has been exhausted and a "final" decision has been rendered.

(8) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(9) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(8), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60<sup>th</sup> day after the date of mailing of the decision or supplemental decision. Regulation 1807. (Contd.) 3

**(c) REVIEW BY APPEALS DIVISION.**

(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(9). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will prepare the file and forward it to the Appeals Division within 30 days of receipt of the objection. The petitioner, all notified jurisdictions, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference. The Appeals Division shall schedule an appeals conference within 6 months from receipt of the file from the Allocation Group.

(A) Petitioner or any notified jurisdiction may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified jurisdictions.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision within 60 days, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision within 60 days, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If an objection to a second supplemental decision is filed by either the petitioner or a notified jurisdiction it will be immediately forwarded to the Appeals Division. An appeals conference shall be scheduled within 90 days of receipt of the objection. If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. A notified jurisdiction may participate in the appeals conference regardless of whether the Sales and Use Tax Department has previously ruled in favor of, or in opposition to its position. Any subject taxpayer directly taking part in an appeals conference shall disclose to all participants the existence and terms of any revenue sharing or incentive agreement involving local tax monies. To make the conference most productive, each participant ~~should~~ shall submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals ~~conference, however~~ conference. ~~Additional~~ Additional relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~45 days~~ 30 days after the appeals conference, ~~or 30 days with sufficient justification, to submit to the conference holder,~~ with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed 15 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted. ~~without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.~~

~~(4) The Appeals Division shall notify all participants once the final submission is received. Within 90 days of receipt of the final submission:~~ the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 30 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

~~(6) The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.~~

~~(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.~~

~~(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).~~

#### **(d) REVIEW BY BOARD.**

(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R ~~or any SD&R~~. Such a request must state the basis for the jurisdiction's disagreement with the D&R ~~or SD&R~~ as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing. Any taxpayer or notified jurisdiction electing to participate in the hearing shall disclose the existence and terms of any revenue sharing agreements between the taxpayer and any notified jurisdiction.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for reallocation exhausts all administrative remedies on the matter for all jurisdictions.

**(e) LIMITATION PERIOD FOR REDISTRIBUTIONS.** Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge. Regulation 1807. (Contd.) 5

**(f) APPLICATION TO SECTION 6066.3 INQUIRIES.**

The procedures set forth herein for submitting a petition for reallocation of local tax are separate from those applicable to a submission under Revenue and Taxation Code section 6066.3. If a petition under the procedures set forth herein and a submission under section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to that earliest submission. However, the procedures set forth in subdivisions (b), (c), and (d) also apply to appeals from reallocation determinations made under section 6066.3.

**(g) OPERATIVE DATE AND TRANSITION RULES.**

This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. It is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that are governed by prior Regulation 1807 (effective February 22, 2003).

(1) The operative date of this regulation is the date it becomes effective under Section 11343.4 of the Government Code (thirty days after it has been approved by the Office of Administrative Law and forwarded to the Secretary of State) and it shall have no retroactive effect.

(2) Petitions filed prior to the operative date of this regulation, shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after that date. All such petitions filed prior to January 1, 2003 and denied by Board Management must perfect any access they may have to a Board Member hearing no later than 60 days after the operative date of this regulation.

*History:* Adopted August 1, 2002, effective February 22, 2003.

Amended May 28, 2008, effective September 10, 2008. Replaced all previous language to provide for a more comprehensive process for review of petitions for local tax reallocation, to restructure the request for extension process, and to provide earlier notification to substantially affected jurisdictions.

*Regulations are issued by the State Board of Equalization to implement, interpret or make specific provisions of the California Sales and Use Tax Law and to aid in the administration and enforcement of that law. If you are in doubt about how the Sales and Use Tax Law applies to your specific activity or transaction, you should write the nearest State Board of Equalization office.*

*Requests for advice regarding a specific activity or transaction should be in writing and should fully describe the facts and circumstances of the activity or transaction.*